

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUL 08 2021

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

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9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 RYAN MICHAEL KALMBACK,

15 Defendant.

No: 2:20-CR-162-TOR-1

PLEA AGREEMENT
Rule 11(c)(1)(C)

16
17 Plaintiff, United States of America, by and through Joseph H. Harrington,
18 Acting United States Attorney for the Eastern District of Washington, and
19 Alison L. Gregoire, Assistant United States Attorney for the Eastern District of
20 Washington, and Defendant RYAN MICHAEL KALMBACK and the
21 Defendant's counsel, Colin G. Prince, agree to the following Plea Agreement
22 pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C):

23 1. Guilty Plea and Maximum Statutory Penalties:

24 The Defendant, RYAN MICHAEL KALMBACK, agrees to plead guilty,
25 pursuant to Fed. R. Crim. P. 11(c)(1)(C) to Count 1 of the Indictment in this case
26 charging the Defendant with: Receipt of Child Pornography, in violation of 18
27 U.S.C. § 2252A(a)(2)(A). The Defendant understands that the charge of Receipt
28

1 of Child Pornography, in violation of 18 U.S.C. § 2252A(a)(2)(A) carries a
2 maximum penalty of not less than five years nor more than twenty years
3 imprisonment, a fine not to exceed \$250,000; a term of supervised release of not
4 less than 5 years up to life; a \$100 special penalty assessment; a \$5000 special
5 assessment pursuant to the Justice for Victims of Trafficking Act of 2015, unless
6 the Court finds Defendant to be indigent; and an additional special penalty
7 assessment of no more than \$35,000, pursuant to the Amy, Vicky and Andy
8 Child Pornography Victim Assistance Act of 2018, 18 U.S.C. § 2259A.

9 The Defendant, RYAN MICHAEL KALMBACK, understands that a
10 violation of a condition of supervised release carries an additional penalty of re-
11 imprisonment for all or part of the term of supervised release without credit for
12 time previously served on post-release supervision.

13 2. The Court is Not a Party to the Agreement:

14 The Court is not a party to this Plea Agreement and may accept or reject
15 this Plea Agreement. Sentencing is a matter that is solely within the discretion of
16 the Court. The Defendant understands that the Court is under no obligation to
17 accept any recommendations made by the United States and/or by the
18 Defendant; that the Court will obtain an independent report and sentencing
19 recommendation from the U.S. Probation Office; and that the Court may, in its
20 discretion, impose any sentence it deems appropriate up to the statutory
21 maximums stated in this Plea Agreement.

22 The Defendant acknowledges that no promises of any type have been
23 made to the Defendant with respect to the sentence the Court will impose in this
24 matter. The Defendant understands that the Court is required to consider the
25 applicable sentencing guideline range but may depart upward or downward
26 under the appropriate circumstances.

27 The United States and the Defendant agree that this Plea Agreement is
28

1 entered pursuant to Fed. R. Crim. P. 11(c)(1)(C) and to jointly recommend
2 Defendant be sentenced to 5 years for Receipt of Child Pornography.

3 The Defendant understands that this is a Plea Agreement pursuant to Fed.
4 R. Crim. P. 11(c)(1)(C) and that the United States may withdraw from this Plea
5 Agreement if the Court imposes a lesser sentence than agreed upon. The
6 Defendant further understands that the Defendant will have the option to
7 withdraw from this Plea Agreement if the Court imposes a sentence harsher than
8 agreed upon.

9 3. Waiver of Constitutional Rights:

10 The Defendant, RYAN MICHAEL KALMBACK, understands that by
11 entering this plea of guilty the Defendant is knowingly and voluntarily waiving
12 certain constitutional rights, including:

- 13 (a). The right to a jury trial;
14 (b). The right to see, hear and question the witnesses;
15 (c). The right to remain silent at trial;
16 (d). The right to testify at trial; and
17 (e). The right to compel witnesses to testify.
18

19 While the Defendant is waiving certain constitutional rights, the
20 Defendant understands the Defendant retains the right to be assisted through the
21 sentencing and any direct appeal of the conviction and sentence by an attorney,
22 who will be appointed at no cost if the Defendant cannot afford to hire an
23 attorney. The Defendant also acknowledges that any pretrial motions currently
24 pending before the Court are waived.

25 4. Elements of the Offense:

26 The United States and the Defendant agree that in order to convict the
27 Defendant of Receipt of Child Pornography, in violation of 18 U.S.C. §
28 2252A(a)(2)(A), the United States would have to prove beyond a reasonable

1 doubt the following elements:

- 2 (1) On or about and between May 19, 2019, and July 25, 2019, in the
- 3 Eastern District of Washington, the Defendant knowingly received a visual
- 4 depiction of child pornography;
- 5 (2) the Defendant knew the production of such visual depiction(s) involved
- 6 the use of minor(s) engaged in sexually explicit conduct;
- 7 (3) the visual depictions had been mailed or shipped or transported in or
- 8 affecting interstate or foreign commerce by any means, including by
- 9 computer.

10 5. Factual Basis and Statement of Facts:

11 The United States and the Defendant stipulate and agree that the following
 12 facts are accurate; that the United States could prove these facts beyond a
 13 reasonable doubt at trial; and these facts constitute an adequate factual basis for
 14 Defendant RYAN MICHAEL KALMBACK's guilty plea. This statement of
 15 facts does not preclude either party from presenting and arguing, for sentencing
 16 purposes, additional facts which are relevant to the guideline computation or
 17 sentencing, unless otherwise prohibited in this agreement.

18 On May 27, 2020, SA Booth was provided a lead from the FBI Anchorage
 19 Division concerning an investigation beginning May 19, 2018 and continuing
 20 through April 01, 2020. An undercover Anchorage-based agent exchanged
 21 messages via Kik Messenger with Kik user Rhy25 (later determined to be
 22 KALMBACK). The chat contained conversation about Rhy25's interest in
 23 having sex with the undercover's 12-year-old daughter.¹ During the
 24 conversation, KALMBACK sent two child pornography videos to the
 25 undercover that KALMBACK had previously received via the internet. One of
 26

27
 28 ¹ The undercover was posing as a father.

1 the videos depicts what appears to be an adult penis in the anus of a pre-
2 pubescent child. The other depicts a pre-pubescent female orally copulating the
3 penis of an adult male.

4 On December 18, 2019, Anchorage Division received the results of an
5 administrative subpoena to Kik for subscriber information for Rhy25. The email
6 provided for the account by the subject was rkalmback@yahoo.com. Kik
7 provided the established date for user "Rhy25" as June 2, 2012. The Kik account
8 was still active and Kik provided IP Address logins for November and
9 December 2019. The IP Address logins were mostly Sprint cellular (and
10 therefore not traceable to a specific residence) but three residential IPs were
11 located. There were IP addresses that appeared to correlate to residences used
12 between November 21, 2019 and November 23, 2019, where KALAMBACK
13 had been staying. One was an address in Medical Lake, and one was a hotel in
14 Missoula, which KALAMBACK had stayed at on the day the IP address was
15 listed.

16 Additionally, an Anchorage Special Agent requested a driver's license
17 photo of Ryan KALMBACK. The driver's license photo returned to the Agent
18 was the same person depicted in the profile photo and all chat icon photos of the
19 Rhy25 Kik account. A Special Agent matched the driver's license photo to the
20 chat icons. The birthdate listed on KALMBACK'S driver's license matches the
21 age Rhy25 had stated in the chats. SA Booth also found KALMBACK'S
22 Facebook page, which again depicted the same person as the Kik account profile
23 photo.

24 A search warrant was obtained for KALMBACK's residence and
25 executed on July 30, 2020. KALMBACK's phone was seized and searched.
26 Child pornography images were located on the phone and, per the file path,
27 many had been transmitted to KALMBACK via Kik. In total, KALMBACK had
28

1 received 5 child pornography videos and 86 child pornography still images. The
 2 receipt "creation" dates indicate KALMBACK received the images on his phone
 3 between May 19, 2019 and July 25, 2020. KALMBACK was present at the time
 4 the warrant was executed and confessed (post-*Miranda*), to using Kik to obtain
 5 child pornography on his Apple iPhone. He identified his account as "Rhy25."

6 6. The United States Agrees:

7 The United States Attorney's Office for the Eastern District of
 8 Washington agrees not to bring any additional charges against the Defendant
 9 based upon information in its possession at the time of this Plea Agreement and
 10 arising out of Defendant's conduct involving illegal activity charged in the
 11 Indictment in this case, unless the Defendant breaches this Plea Agreement any
 12 time before or after sentencing. The United States also agrees to dismiss Count 2
 13 of the Indictment against Defendant, alleging Distribution of Child Pornography.

14 7. United States Sentencing Guideline Calculations:

15 The Defendant understands and acknowledges that the United States
 16 Sentencing Guidelines (hereinafter "U.S.S.G.") are applicable to this case and
 17 that the Court will determine the Defendant's applicable sentencing guideline
 18 range at the time of sentencing.

19 (a.) Base Offense Level:

20 The United States and the Defendant agree that the base offense level for
 21 Receipt of Child Pornography is 22. See U.S.S.G. §2G2.2(a)(2).
 22

23 (b.) Specific Offense Characteristics:

24 The United States and the Defendant also agree and stipulate that the base
 25 offense is increased as follows:

26 (1) 2-level increase because material involved a prepubescent minor who

27 had not attained the age of 12. U.S.S.G. § 2G2.2(b)(2);

28 (2) 2-level increase because the offense involved use of a computer for the

1 receipt/distribution of the material. U.S.S.G. § 2G2.2(b)(6);
2 (3) 4-level increase because the offense involved 300 or more images.
3 U.S.S.G. § 2G2.2(b)(7)(C);
4 (4) 2-level increase because the offense involved distribution. U.S.S.G.
5 § 2G2.2(b)(3)(F).

6 (c.) Acceptance of Responsibility:

7 If the Defendant pleads guilty and demonstrates a recognition and
8 affirmative acceptance of personal responsibility for the criminal conduct;
9 provides complete and accurate information during the sentencing process; does
10 not commit any obstructive conduct; and accepts this Plea Agreement; the
11 United States will move for a three (3) level downward adjustment in the offense
12 level for the Defendant's timely acceptance of responsibility, pursuant to
13 U.S.S.G. §3E1.1(a) and (b).

14 The Defendant and the United States agree that the United States may at
15 its option and upon written notice to the Defendant, not recommend a three (3)
16 level downward reduction for acceptance of responsibility if, prior to the
17 imposition of sentence, the Defendant is charged or convicted of any criminal
18 offense whatsoever or if the Defendant tests positive for any controlled
19 substance.
20

21 (d.) Criminal History:

22 The United States and the Defendant understand that the Defendant's
23 criminal history computation is tentative and that ultimately the Defendant's
24 criminal history category will be determined by the Court after review of the
25 Presentence Investigative Report. The United States and the Defendant have
26 made no agreement and make no representations as to the criminal history
27 category, which shall be determined after the Pre-Sentence Investigative Report
28 is completed.

1 8. Jointly Recommended Term of Imprisonment:

2 The United States and the Defendant agree that this Plea Agreement is
3 entered pursuant to Fed. R. Crim. P. 11(c)(1)(C) and to jointly recommend
4 Defendant be sentenced to 5 years imprisonment for Receipt of Child
5 Pornography.

6 9. Criminal Fine:

7 The United States and the Defendant are free to make whatever
8 recommendation concerning the imposition of a criminal fine that they believe is
9 appropriate. Neither party may withdraw from the Plea Agreement based on the
10 ultimate fine imposed.

11 10. Supervised Release:

12 The United States and the Defendant agree to recommend a term of
13 supervised release. The United States will recommend a 20 (twenty) year term of
14 supervised release. Defendant may recommend any legal term of supervised
15 release. Neither party may withdraw from the Plea Agreement based on the
16 ultimate term of supervised release imposed.

17
18 11. Restitution:

19 The United States and the Defendant agree restitution must be paid to
20 identified victims. No precise restitution amount has yet been agreed upon by the
21 parties. The United States and the Defendant hereby stipulate and agree that
22 pursuant to 18 U.S.C. § 2259(b)(2), the Court shall order restitution for the full
23 amount of the victims' losses in an amount that reflects the Defendant's relative
24 role in the causal process that underlies the victim's losses, but which is no less
25 than \$3,000 per victim.

26 With respect to any restitution, the parties agree to the following:

27 (a) Restitution Interest

1 The interest on the restitution amount should be waived.

2 (b) Payments

3 The parties agree the Court will set a restitution payment schedule based on
4 financial circumstances. *See* 18 U.S.C. § 3664(f)(2), (3)(A). Defendant agrees to
5 pay not less than 10% of his net monthly income towards his restitution obligation.

6 (c) Treasury Offset Program and Collection

7 Defendant understands the Treasury Offset Program collects delinquent
8 debts owed to federal agencies. If applicable, the TOP may take part or all of
9 Defendant's federal tax refund, federal retirement benefits, or other federal benefits
10 and apply these monies to Defendant's restitution obligations. *See* 26 U.S.C. §
11 6402(d); 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

12 Defendant also understands the United States may, notwithstanding the
13 Court-imposed payment schedule, pursue other avenues to ensure the restitution
14 obligation is satisfied, including, but not limited to, garnishment of available funds,
15 wages, or assets. *See* 18 U.S.C. §§ 3572, 3613, and 3664(m). Nothing in this
16 acknowledgment shall be construed to limit Defendant's ability to assert any
17 specifically identified exemptions as provided by law, except as set forth in this
18 Plea Agreement.

19 Until a fine or restitution order is paid in full, Defendant agrees fully to
20 disclose all assets in which he has any interest or over which he exercises control,
21 directly or indirectly, including those held by a spouse, nominee or third party.
22 Defendant agrees to truthfully complete the Financial Disclosure Statement that
23 will be provided by the earlier of 30 days from Defendant's signature on this plea
24 agreement or the date of Defendant's entry of a guilty plea, sign it under penalty of
25 perjury and provide it to both the United States Attorney's Office and the United
26 States Probation Office. Defendant expressly authorizes the U.S. Attorney's Office
27 to obtain a credit report on Defendant upon the signing of this Plea Agreement.
28

1 Until such time as the fine or restitution order is paid in full, Defendant agrees to
 2 provide waivers, consents or releases requested by the U.S. Attorney's Office to
 3 access records to verify the financial information.

4 (d) Notifications

5 The Defendant agrees to notify the Court and the United States of any
 6 material change in his economic circumstances (e.g., inheritances, monetary gifts,
 7 changed employment, or income increases) that might affect his ability to pay
 8 restitution. *See* 18 U.S.C. § 3664(k). This obligation ceases when the restitution is
 9 paid-in-full.

10 The Defendant agrees to notify the United States of any address change
 11 within 30 days of that change. *See* 18 U.S.C. § 3612(b)(F). This obligation ceases
 12 when the restitution is paid-in-full.

13 12. Mandatory Special Penalty Assessments:

14 The Defendant agrees to pay the \$100 mandatory special penalty
 15 assessment to the Clerk of Court for the Eastern District of Washington, at or
 16 before sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from
 17 the Clerk to the United States before sentencing as proof of this payment.

18 Pursuant to the Justice for Victims of Trafficking Act of 2015, 18 U.S.C.
 19 § 3014, upon conviction, unless the Sentencing Court finds the Defendant to be
 20 indigent, an additional mandatory special assessment of \$5,000 must also be
 21 imposed.

22 Pursuant to the Amy, Vicky and Andy Child Pornography Victim
 23 Assistance Act of 2018, 18 U.S.C. § 2259A, upon conviction, in addition to any
 24 other criminal penalty, restitution, or special assessment authorized by law, the
 25 court shall assess additional special penalty assessment of no more than \$35,000.

26 13. Payments While Incarcerated:

27 If the Defendant lacks the financial resources to pay the monetary
 28

1 obligations imposed by the Court, the Defendant agrees to earn the money to pay
2 toward these obligations by participating in the Bureau of Prisons' Inmate
3 Financial Responsibility Program.

4 14. Judicial Forfeiture:

5 The Defendant, RYAN MICHAEL KALMBACK, agrees to voluntarily
6 forfeit and relinquish all right, title and interest in all assets listed herein to the
7 United States, and hereby agrees to execute any and all forms and pleadings
8 necessary to effectuate such forfeiture of assets, including, but not limited to the
9 following:

- 10 - Red iPhone SE, serial number: FFWCPG9VPLK1

11 The Defendant stipulates that he is the sole owner of the assets identified in
12 this Plea Agreement and that no one else has an interest in the assets.

13 The Defendant acknowledges that the assets listed above that the Defendant
14 is agreeing to forfeit are subject to forfeiture pursuant to 18 U.S.C. § 2253(a) and
15 (b), as property used or intended to be used in any manner or part to commit or to
16 facilitate the commission of Receipt of Child Pornography as charged in Count 1
17 of the Indictment, in violation of 18 U.S.C. § 2252A(a)(2)(A), (b)(1), to which
18 Defendant is pleading guilty. The Defendant agrees to take all steps as requested
19 by the United States to pass clear title to the assets to the United States, and to
20 testify truthfully in any forfeiture proceeding.

21 The Defendant agrees to hold all law enforcement agents/officers, and the
22 United States, its agents, and its employees harmless from any claims whatsoever
23 arising in connection with the seizure and forfeiture of any asset covered by this
24 agreement.

25 The Defendant waives further notice of any federal, state, or local
26 proceedings involving the forfeiture of the seized assets the Defendant is agreeing
27 to forfeit in this Plea Agreement.
28

1 The Defendant further agrees to waive all constitutional, equitable and
2 statutory challenges in any manner (including direct appeal, habeas corpus, or any
3 other means) to any forfeiture carried out in accordance with this Plea Agreement
4 on any grounds, including that the forfeiture constitutes an excessive fine or
5 punishment. Defendant knowingly and voluntarily waives his right to a jury trial
6 on the forfeiture of the asset(s). Defendant waives oral pronouncement of
7 forfeiture at the time of sentencing, and any defects that may pertain to the
8 forfeiture.

9 15. Additional Violations of Law Can Void Plea Agreement:

10 The Defendant and the United States agree that the United States may at
11 its option and upon written notice to the Defendant, withdraw from this Plea
12 Agreement or modify its recommendation for sentence if, prior to the imposition
13 of sentence, the Defendant is charged or convicted of any criminal offense
14 whatsoever or if the Defendant tests positive for any controlled substance.

15 16. Appeal Rights:

16 Defendant understands that he has a limited right to appeal or challenge
17 the conviction and sentence imposed by the Court. If the Court imposes a
18 sentence of not more than 5 years imprisonment, Defendant hereby expressly
19 waives his right to appeal his conviction and the sentence the Court imposes,
20 including any restitution order up to \$14,000, special assessments, and order of
21 supervised release. Defendant retains his right to appeal a restitution order
22 totaling more than \$14,000. Defendant further expressly waives his right to file
23 any post-conviction motion attacking his conviction and sentence, including a
24 motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective
25 assistance of counsel based on information not now known by Defendant and
26 which, in the exercise of due diligence, could not be known by Defendant by the
27 time the Court imposes the sentence.
28

1 17. Notice of Sex Offender Registration:

2 The Defendant has been advised and understands, that as a convicted sex
3 offender, under the Sex Offender Registration and Notification Act, a federal
4 law, the Defendant must register and keep the registration current in each of the
5 following jurisdictions: the location of the Defendant's residence, the location of
6 the Defendant's employment; and, if the Defendant is a student, the location of
7 the Defendant's school. Registration will require that the Defendant provide
8 information that includes name, residence address, and the names and addresses
9 of any places at which the Defendant is or will be an employee or a student. The
10 Defendant understands that he must update his registrations not later than three
11 business days after any change of name, residence, employment, or student
12 status. The Defendant understands that failure to comply with these obligations
13 subjects the Defendant to prosecution for failure to register under federal law, 18
14 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

15 18. Integration Clause:

16 The United States and the Defendant acknowledge that this document
17 constitutes the entire Plea Agreement between the United States and the
18 Defendant, and no other promises, agreements, or conditions exist between the
19 United States and the Defendant concerning the resolution of the case. This Plea
20 Agreement is binding only upon the United States Attorney's Office for the
21 Eastern District of Washington, and cannot bind other federal, state, or local
22 authorities. The United States and the Defendant agree that this agreement
23 cannot be modified except in a writing that is signed by the United States and
24 the Defendant.
25

26
27
28 Approvals and signatures

1 Agreed and submitted on behalf of the United States Attorney's Office for
2 the Eastern District of Washington.

3
4 Joseph H. Harrington
5 Acting United States Attorney

6
7 
8 Alison L. Gregoire

9 Assistant U.S. Attorney

7/8/21
Date

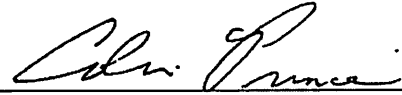
10
11 I have read this Plea Agreement and have carefully reviewed and
12 discussed every part of the agreement with my attorney. I understand and
13 voluntarily enter into this Plea Agreement. Furthermore, I have consulted with
14 my attorney about my rights, I understand those rights, and I am satisfied with
15 the representation of my attorney in this case. No other promises or inducements
16 have been made to me, other than those contained in this Plea Agreement and no
17 one has threatened or forced me in any way to enter into this Plea Agreement. I
18 am agreeing to plead guilty because I am guilty.

19
20
21 
22 RYAN MICHAEL KALMBACK
23 Defendant

7/7/21
Date

24
25 I have read this Plea Agreement and have discussed the contents of the
26 agreement with my client. The Plea Agreement accurately and completely sets
27 forth the entirety of the agreement between the parties. I concur in my client's
28 decision to plead guilty as set forth in the Plea Agreement. There is no legal

1 reason why the Court should not accept the Defendant's plea of guilty.

2
3 

4
5 Colin G. Prince
6 Attorney for the Defendant

7/7/2021
Date